

BROWNELL & CO.

JANUARY 29, 1897.—Committed to the Committee of the Whole House and ordered to be printed.

Mr. Cox, from the Committee on Claims, submitted the following

REPORT.

[To accompany H. R. 8284.]

The Committee on Claims, to which was referred the bill (H. R. 8284) authorizing the Secretary of the Treasury to pay the sum of \$400 to Brownell & Co., Dayton, Ohio, in remission of penalty imposed by the Light-House Board, have had the same under consideration and report it back with the recommendation that it pass.

There is no statutory enactment warranting the Light-House Board to remit penalties imposed by the terms of their contracts, and while there is no lawful provision precluding the Secretary of the Treasury from remitting penalties of this character, under a regulation of the Light-House Board, approved by the Department, the Secretary has waived his discretion to enforce forfeitures accruing under contracts. This has compelled contractors upon whom penalties have been improperly imposed to resort to special legislation to recover.

September 10, 1895, a contract was entered into by Brownell & Co. and Major Adams, light-house engineer at Detroit, Mich., the latter representing the Government, for the construction of two boilers, boiler attachments, and whistle valves and attachments, the consideration being \$1,490, delivery to be made within ninety days.

It was stipulated that the contractors should forfeit \$10 per day for each and every day's delay in completing and delivering the boilers, etc., after the date of the contract's execution.

It was further provided that the boilers should be subjected to a rigid inspection, to be made by the party of the first part or its agent or agents.

Brownell & Co. contracted with Carnegie & Co., of Pittsburg, for the steel necessary to construct, and the Pittsburg firm, under date of September 28, 1895, requested that inspection of the material be made according to law.

Under date of October 1, 1895 (Exhibit A), Major Adams, in a letter to the Light-House Board, Washington, D. C., says:

I have, therefore, the honor to request that the Supervising Inspector-General, James A. Dumont, Washington, D. C., be requested to have the steel intended for the construction of our boilers regularly tested and marked, as required by the marine laws, at the earliest possible date.

Captain Millis, secretary of the Light-House Board, replied to Major Adams under date of October 5, 1895 (Exhibit B), that the Supervising Inspector-General of the Steamboat-Inspection Service, General Dumont, after being advised of the specifications of the contract, directed Assistant Inspector Daugherty, at Pittsburg, to inspect the material.

November 16, 1895, more than a month afterwards, Major Adams was advised by Brownell & Co. that inspection had not been made, that their time was short, and that the Government should hasten inspection. This official (Exhibit C) communicated this information to the Light-House Board, whose secretary, Captain Millis, under date of November 18, 1895 (Exhibit D), replied in the following vague and unsatisfactory way:

The Board informs you that the contract requires that samples of the boiler sheets be tested as required by law and that the results of the test be furnished to the Light-House Board. The Board, therefore, has no special instructions to give.

Major Adams, under date of November 20, 1895 (Exhibit E), replied as follows:

The date for the expiration of the contract for the construction of two fog-horn boilers by Brownell & Co., of Dayton, Ohio, is December 9, 1895, and it would seem to me advisable that inspection of the steel plates be made at as early a date as practicable. As this inspection is to be made under the direction of the Supervising Inspector-General of the Steamboat-Inspection Service, it was hoped that the Board would expedite matters, and it was with this end in view that my former letter was written. As there are now only nineteen days, including Sundays and holidays, or fifteen working days, remaining before the expiration of the contract, it appears to me a great injustice to a reputable manufacturer to expect the terms of the contract, when the cause of the delay is entirely occasioned by one of the inspectors appointed by the Government to pass upon the sheets; I therefore deem it no more than right to grant an extension to the contract.

It will be seen by the following circumstance that the Light-House Board added to the delay already occasioned through the nature of its own correspondence. Captain Millis, under date of October 5, 1895, had advised Major Adams, at Detroit, that the Supervising Inspector-General had directed the necessary inspection, admits under date of November 23, 1895 (Exhibit F), that his misleading letter of November 18, 1895, was due to the fact that the Board's action in requesting the Inspector-General to make the investigation had been overlooked.

An attempt is made to condone the Pittsburg inspector's delay by saying that the service in question "is not required by law of the Inspector-General's Department and is performed as a courtesy to the Board." In other words, the Government, through the secretary of the Light-House Board, Captain Millis, had advised that inspection would be by General Dumont, and when the contractors complained of delay upon his part, the same Government officer insists that such service is only performed as a courtesy and that he is not compelled to act upon the request of the Light-House Board.

Secretary Millis, writing to Major Adams, attempts to mitigate the delay in inspection by reference to the Revised Statutes (Exhibit G), which, it seems, confine the Inspector-General's Department to the Merchant Marine.

Brownell & Co. and the Carnegie Company remained insistent in their request that inspection be made as per first advice from the Light-House Board, and that it be done at once.

It develops that Mr. Daugherty, of the Inspector-General's Department, did, as a matter of fact, make the inspection, but his report did not reach the Light-House Board until December 2, seven days before the expiration of the contract, whereas the contractors, as before stated, had advised the Government early in October that they were ready for inspection. The work was rejected, which made replacement necessary, but the material was again ready for inspection December 5, 1895, only two days later, and after acceptance was ready for shipment to Brownell & Co., the boiler makers, December 7.

By reason of these continued delays Brownell & Co. were not enabled to fulfill their contract within the time specified. It will be noticed that fifty-two days elapsed from the time the first steel plates were ready for inspection to date of shipment, and it is perfectly proper to assume that twelve days were more than sufficient to replace those rejected.

In the judgment of the committee the contractors would have fulfilled their part of the contract in abundant good time had it not been for these delays of the Government officers and the misapprehension which they created between one another.

EXHIBIT A.

OFFICE OF ENGINEER NINTH AND ELEVENTH DISTRICTS,
Detroit, Mich., October 1, 1895.

SIRS: In connection with the construction of two boilers by The Brownell & Co., of Dayton, Ohio, under contract, they have just sent me a letter, of which the inclosed is a copy.

I have, therefore, the honor to request that the Supervising Inspector-General, James A. Dumont, Washington, D. C., be requested to have the steel intended for the construction of our boilers regularly tested and marked, as required by the marine laws, at the earliest possible date.

Our specification requirements are not less than 54,000 pounds and not more than 60,000 pounds to the square inch.

Respectfully,

M. B. ADAMS,
Major of Engineers, U. S. A., Light-House Engineer.

The LIGHT-HOUSE BOARD,
Washington, D. C.

THE CARNEGIE STEEL COMPANY, LIMITED,
Cincinnati, Ohio, September 28, 1895.

DEAR SIRS: Referring to your order, No. 1363, covering marine steel plates, would advise that the Supervising Inspector-General at Washington, D. C., will not authorize the inspection of the material called for unless requested by the head of the Department ordering it. Please, therefore, take up, with your patron, immediately the matter of securing such request on James A. Dumont, the Inspector-General.

Awaiting your reply, we remain,
Yours, truly,

THE CARNEGIE STEEL CO., LIMITED,
W. H. D. TOTTEN, Jr.,
Sales Agent.

THE BROWNELL & CO.,
Dayton, Ohio.

EXHIBIT B.

TREASURY DEPARTMENT, OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, D. C., October 5, 1895.

SIR: Referring to your letter of October 1, 1895, the Board informs you that instructions have been sent by the Supervising Inspector-General of the Steamboat-Inspection Service to assistant inspector, Mr. Daniel J. Daugherty, at Pittsburg, Pa., to inspect the material for The Brownell & Co., of Dayton, Ohio, to be used in the construction of the two fog-signal boilers for which they have made contract.

Please furnish the assistant inspector with a copy of the specifications at the earliest practicable date.

The Supervising Inspector-General has been informed that the contract provides that the expense connected with this inspection will be paid by the contractors.

Respectfully,

JOHN MILLIS,
Captain, Corps of Engineers, U. S. A., Engineer Secretary.

Maj. M. B. ADAMS, U. S. A.,
Engineer Eleventh Light-House District, Detroit, Mich.

BROWNELL & CO.

EXHIBIT C.

OFFICE OF ENGINEER NINTH AND ELEVENTH DISTRICTS,
Detroit, Mich., November 16, 1895.

SIRS: I have the honor to transmit herewith copy of a letter received by me from The Brownell & Co., in regard to the inspection of the steel plates required in the construction of the two fog-signal boilers now being constructed for this establishment under formal contract.

I have the honor to ask instructions in this regard.

Respectfully,

The LIGHT-HOUSE BOARD,
 Washington, D. C.

M. B. ADAMS,
Major of Engineers, U. S. A., Light-House Engineer.

THE BROWNELL & Co.,
Dayton, Ohio, November 15, 1895.

DEAR SIR: We inclose you a copy of a telegram we have just received from The Carnegie Steel Company, in regard to the steel for your light-house boilers. We thought probably you could get the inspectors to hurry their inspector, as our time is getting very short, and we are anxious to get them completed in time. The Carnegie people, in their last letter to us, claim that they have been waiting for the inspector to come and test the steel, and possibly a letter from you would hurry them up. Anything you could do to hurry them up will be very much appreciated by

Yours, very respectfully,

THE BROWNELL & Co.,
 Per J. B. JOHNSON.

Maj. M. B. ADAMS,
Major of Engineers, United States Light-House Board, Detroit, Mich.

[Telegram.]

CINCINNATI, OHIO, November 15, 1895.

THE BROWNELL & Co.,
Dayton, Ohio:

Order 1363 delayed by inspection. Will ship as soon as possible.

W. H. D. TOTTEN, JR.

EXHIBIT D.

TREASURY DEPARTMENT, OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, D. C., November 18, 1895.

SIR: Your letter of November 16, 1895, together with a copy of a letter from The Brownell & Co., relating to the inspection of the steel plates required in the construction of the two fog-signal boilers now being constructed for the Light House Establishment, has been received.

In reply the Board informs you that the contract requires that samples of the boiler sheets be tested as required by law, and that the results of the test be furnished to the Light-House Engineer.

The Board, therefore, has no special instructions to give.

Respectfully,

JOHN MILLIS,
Captain, Corps of Engineers, U. S. A., Engineer Secretary.

Maj. M. B. ADAMS, U. S. A.,
Engineer Eleventh Light-House District, Detroit, Mich.

EXHIBIT E.

OFFICE OF ENGINEER, NINTH AND ELEVENTH DISTRICTS,
Detroit, Mich., November 20, 1895.

SIRS: Acknowledging the receipt of the Board's letter dated November 18, 1895, in answer to my letter of November 16, 1895, I have the honor to inform the Board that the date for the expiration of the contract for the construction of the two fog-signal boilers by The Brownell & Co., of Dayton, Ohio, is December 9, 1895, and it would seem to me advisable that the inspection of the steel plates be made at as early a date as practicable. As this inspection is to be made under the direction of the Supervising Inspector-General of the Steamboat-Inspection Service it was hoped that the Board

could expedite matters, and it was with this end in view that my former letter was written.

As there are now only nineteen days, including Sundays and holidays, or fifteen working days, remaining before the expiration of the contract, it appears to me a grave injustice to a reputable manufacturer to expect a fulfillment of the terms of the contract when the cause of delay is entirely occasioned by one of the inspectors appointed by the Government to pass upon the sheets.

I therefore deem it no more than right to grant an extension to the contract of such time as is necessary to properly complete the work after the receipt of these plates by the firm.

Respectfully,

M. B. ADAMS,
Major of Engineers, U. S. A., Light-House Engineer.

The LIGHT-HOUSE BOARD,
Washington, D. C.

EXHIBIT F.

TREASURY DEPARTMENT, OFFICE OF THE LIGHT-HOUSE BOARD,
Washington D. C., November 23, 1895.

SIR: Your letter of November 20, 1895, relative to the inspection of the steel plates required for the two fog-signal boilers for which The Brownell & Co., of Dayton, Ohio, is under contract, has been received.

In making the draft of the Board's letter of November 18, 1895, the previous action in the case was overlooked.

As stated in the Board's letter of October 5, 1895, the Supervising Inspector-General, upon request of the Board, instructed the assistant inspector at Pittsburg, Pa., to make the inspection. This service is not required by law of the Inspector-General's Department, and is performed as a courtesy to the Board.

It is not clear from the information available that there has been delay on the part of the local inspector in complying with his instructions, and the Board would not be warranted in taking further action until it may appear, upon careful inquiry, that the local inspector is responsible for the delay.

Respectfully,

JOHN MILLIS,
Captain, Corps of Engineers, U. S. A., Engineer Secretary.

Maj. M. B. ADAMS, U. S. A.,
Engineer Ninth and Eleventh Light-House Districts, Detroit, Mich.

EXHIBIT G.

TREASURY DEPARTMENT, OFFICE OF THE LIGHT-HOUSE BOARD,
Washington, D. C., November 27, 1895.

SIR: The Board is in receipt of your letter of November 25, 1895, relative to the inspection of steel for fog-signal boilers, and stating that the contractors for the boilers, The Brownell & Co., Dayton, Ohio, are not, in your opinion, responsible for the delay in procuring the steel, but that the responsibility rests partly, at least, with the Supervising Inspector-General of the Steamboat Service.

In reply, the Board informs you that since it is evident from your letter that a misapprehension exists as to the functions of the Supervising Inspector-General of the Steamboat-Inspection Service, it is deemed proper to make this clear. By reference to the Revised Statutes it will be seen that the duties of that service are confined by law to the merchant marine.

The test of the plates for the fog signal boilers to be built under contract by The Brownell & Co. was made upon request and as a courtesy to this office. The light-house engineer was, of course, warranted in accepting the results of these tests as facts upon which to determine whether or not the material conformed to the specifications of the contract, for the execution of which he is responsible. The Supervising Inspector-General has nothing whatever to do with the question of accepting or rejecting material which it is proposed to use for boilers for the Light-House Service. He can not, therefore, be justly regarded as responsible for any delay which may be attributed to his declining to consider such question, which was improperly submitted to him.

Upon the information submitted, the Board is unable to approve the acceptance of material for the boilers which does not comply with the specifications.

Respectfully,

JOHN MILLIS,
Captain, Corps of Engineers, U. S. A., Engineer Secretary.

Maj. MILTON B. ADAMS, U. S. A.,
Engineer Eleventh Light-House District, Detroit, Mich.

